1952. **File No.** O. Irrigation 52-

Legal Deptt.
A **BRANCH** P7(E)

Subject:— Opinions under the Irrigation Act, Bombay 1879

File No. O. Irrigation/52

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C O N T E N T S.

Legal Department File No. O.Irrigati n /52

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	O.Irrigation 1952	O.Irrigation Opinions under the Bombay Irrigation Act, 1879.	
1.	O.No. 899 2-6-52	Sec. 4(2) Definition of 'water course' under the maintenance of claims who would perhaps be referable to Sec. 21(a) also if claims cannot be treated as subsidiary work section b w the channel---	1.
2.	O.No. 10734 30-6-52	Re: The levy of irrigation cess in respect of schemes to be notified as 2nd irrigation work.	3.
3.	O.No. 16335/A 6-10-52	Re: The villagers of the villages of Bidaj lali and other villages in Ahmedabad Dist on the Khari river have riparian rights over the Khari river---	5.

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"Water-course" has been defined in section 3(2) of the Kemboy Irrigation Act. 1874, to include all subsidiary works connected with any channel or pipe. It is presumed that a chari is included in such subsidiary work connected with the channel or pipe. Under section 21(2) there is a statutory obligation upon the owner of a water-course to maintain such water - course in a fit state of repair for the maintenance of water. This obligation would, therefore, extend to the maintenance of charis also. Moreover, under section 21(e) there is an obligation upon the owner to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses etc. The maintenance of charis would perhaps be referable to this clause also, if charis cannot be treated as subsidiary works connected with the channels. In any case there would thus be an obligation upon the owner to maintain charis. For his failure to fulfil this obligationthe procedure is provided in section 35 which requires that "the Canal Officer should give a notice to the owner to execute the necessary work or repair within a period to be prescribed in such notice of not less than 15 days , and, in the event of failure, may execute the same on his behalf, and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to the Government." This being a statutory provision on the subject a condition in modification of this procedure would not be legal. The owner would have been entitled to a notice, and it is only upon his failure to comply with the notice that the question of executing the repairs arises. No general provision can be made by way of a condition that without any notice the work should be done by the P.W.D. and the cost levied at the rate of Rs. 3/- as a charge per acre.

Sd/-S.N.Lad
1-5 Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 6591, dated the 2nd May 1952
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Levy of irrigation cess in respect of scheme to be notified as 2nd Irrigation works.

Sections 560 to 567 of the Irrigation Act, 1879, provide for levy of irrigation cess. Section 75(1) of the Act in Part X enacts that a Second Class Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3 of and to such work the following sections and parts only (i.e. sections etc. specified) shall, so far as may be, apply. Sections 56C to 567 are included in the sections mentioned in sub-section (1) of section 75 and in the circumstances, it would be competent to levy irrigation cess after the scheme is declared as a Second Class Irrigation Work. In the absence of such a notification, however, the question whether the cess can be levied or not would depend on the question whether the scheme is a "canal" what within the meaning of that terms as defined in section 3(1). It is not clear from the papers what the Lift Irrigation Schemes are and whether they would fall within the term "canal". If any of the schemes will fall within the definition of "canal" the levy of the cess as provided in section 569 of the Irrigation Act, 1879, would be possible. However, having already taken action to notify these schemes as Second Class Irrigation Works it would be desirable to complete and levy the cess under part X of the Act instead of under section 56C even though it be possible.

Sd/-P.N.Lal

30-6

O.C. Remembrancer of Legal Affairs.

U.O. No. A. & F.D.No. 10794, dated the 30th June 1952. S.A.I

Legal Department.

When the A.L.A. expressed his opinion on the last occasion the claim of the Kalambandhi villagers had been already settled. The Kalambandhi villages are there mentioned in paragraph 7 on page 5 of the Kheri Sluices Hand-Book. That the villages Bidaj and Lali of the Mehmedabad taluka in the Kaira District and some other villages in the Ahmedabad District had also riparian rights in respect of the water of the Kheri river was not brought to the notice of Government on the last occasion . Reference is made to page 4 of the Hand-book which states the average area of the land of the villages of Lali, Mahij and Bidaj irrigated between the years 1890-91 and 1899-1900. Except for this statement there is apparently nothing else to suggest that these villages have a riparian right in respect of the water of the Kheri river. Para 7 on page 5 of the Hand book on the contrary mentions the 11 Kalambandhi villages as being the villages having the primary right to the Kheri irrigation. No such statement appears in respect of the villages now referred to by the Collector. In the absence of any more specific evidence in favour of the villagers of these villages it is not possible to say definitely whether there is any force in the objection now raised by the Collector of Kaira. Perhaps the P.W.D. will have to ascertain from the Collector whether there are any substantial reasons in support of the view taken by him . Alternately, it may be possible to issue the proposed notification for inviting objections e in which case if the villagers of these villages at all have any such right as the Collector my reports they would come forward with their protests. In that case it may be possibe to verify the correctness of the Collector's view. After all if the said villagers have got any such right it will be for them to establish the same in a court of law.

Sd/- J.N.Thuramdhar.
4-10

Additional Secretary to Government.

U.O. no to P.W.D. no. 16335/A dated the 6th October 1952.

D.A.K./16-6

Office of the R.L.A.

In view of the report of the Superintending Engineer, Deccan Irrigation Circle, at page 13 ante, that the Bandhara at Gondegaon No. 154 is borne on the permanent list of Bandharas since 1912 , the title of the applicant to the Bandhara, if any, is extinguished by limitation and he can have no valid claim now. There would however be no objection to paying him some compensation ex-gratia.

Sd/-P.N.Lad

10-10

O.C Remembrancer of Legal Affairs.

U.R. to R.D.No. 16827/A dated the 11th October 1952.

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Legal Department.

The question raised in this case is whether betterment charges leviable under the Bombay Irrigation Act, 1879, can be levied from a permanent tenant. Section 52 of the Bombay Irrigation Act, inserted by Bombay Act LIX of 1939, provides that the increase in value on account of a new canal or the improvement or extension of an existing canal shall be the amount by which the value of the land on the completion date is be likely to exceed the value of the land on the construction date and the betterment charges shall be one half of such increase in value. Value of a thing means the price in money for which a thing may be sold or the quantity of some other thing for which it may be exchanged. It is different from its utility or productive capacity. It would be the owner of the person to whom the land belongs who can realise its value. Part VI inserted by Bombay Act LIX of 1950 therefore provides that betterment charges are leviable from the owner and next to the land revenue are a first charge on the land itself. Section 56B also provide that if the owner is not able to pay the same , he can relinquish the land or can get any other land in exchange. By reason of section 87 of the Bombay Tenancy and Agricultural lands Act, 1948, a tenant cannot transfer the land except in certain cases. A tenant, therefore, is not a person who would realise the benefit of any increase in the to pay the betterment charges, he can apply to the Mamlatdar to take such charge into

consideration in determining the reasonable rent, if the agreement of the tenancy does not bar the Mah Mamlatdar from taking that factor into consideration under section 30 of the Act. Rules can, however, be made under section 82(2)(d) enabling the Mah Mamlatdar to take such charges into consideration in fixing the reasonable rent.

Sd/-P.J.R.Dhurandhar,

26-11

O.C. Additional Secretary to Government.

U.R. to
P.W.D. No. 1987B, d at ed the 27th November 1952.

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